

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

FI360, INC.

Plaintiff,

V.

YCHARTS, INC.

Defendant

Civil Action No.: \_\_\_\_\_

## COMPLAINT

## JURY TRIAL DEMANDED

[Filed Electronically]

Plaintiff, FI360, Inc. brings this action against defendant, YCHARTS, INC., and alleges as follows:

## NATURE OF THE ACTION

1. This is an action for false designation of origin for YCHARTS' unauthorized use of FI360 trademarks and for copyright infringement.

## PARTIES

2. Plaintiff, FI360, Inc., (“FI360”) is a company organized under the laws of Delaware, with its principal place of business at 3 Penn Center West, Suite 400, Pittsburgh, PA 15276. FI360’s registered office is 10 Emerson Lane, Suite 801, Abele Office Park, Bridgeville, Pennsylvania 15017.

3. Upon information and belief, defendant, YCHARTS, Inc., (“YCHARTS”) is a Delaware corporation, with its principal places of business at: (i) 414 N. Orleans St., Suite 302, Chicago, IL 60654; and (ii) 307 7th Avenue, Suite 1801 New York, NY 10001.

### **JURISDICTION AND VENUE**

4. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1338(a) and 28 U.S.C. § 1367.

5. Upon information and belief, this Court has personal jurisdiction over YCHARTS because YCHARTS has established minimum contacts with Pennsylvania by purposely availing itself of the laws and benefits of Pennsylvania, because YCHARTS through its interactive website is offering to transact business with persons in this district using the FIDUCIARY SCORE MARK, and the exercise of jurisdiction over the defendants would not offend traditional notions of fair play and substantial justice. The website also infringes FI360’s copyrights by publishing infringing material in this district. Venue exists in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-1391(c) and 28 U.S.C. § 1400.

### **FACTS**

#### **A. FI360’S CREATION, ADOPTION, AND USE OF FIDUCIARY SCORE TRADEMARKS AND COPYRIGHTS**

6. In September of 2007 FI360 began marketing and selling informational services to investment advisors regarding the prudent fiduciary management of funds. The informational services were based upon FI360’s own due diligence and included the reporting of a quantitative rating of a fund’s prudent fiduciary management based on a methodology originally created, authored, described, and utilized by FI360.

7. FI360's informational services are advertised and sold under the marks "FI360 FIDUCIARY SCORE" and "FIDUCIARY SCORE."

8. The description and publication of the methodology was critical to the use and implementation of the services so that financial advisors and the public would have faith in the rating of the funds and the services provided by FI360. Attached as Exhibit 1 is the description of the methodology created, authored, and owned by FI360. A critical portion of the description of the methodology is the interpretation and visual expression of the score as set forth in attached Exhibit 2.

9. Over the years of FI360's exclusive use of "FI360 FIDUCIARY SCORE" and "FIDUCIARY SCORE," FI360 has licensed the use of those marks in conjunction with its proprietary scoring system to numerous advisors.

10. The public has come to know and associate the marks "FI360 FIDUCIARY SCORE" and "FIDUCIARY SCORE" with the information and services provided by FI360. For example, four of FI360's licensees' uses of the marks "FI360 FIDUCIARY SCORE" and "FIDUCIARY SCORE" are: (i) attached as Exhibit 3 – Putnam Funds; (ii) attached as Exhibit 4 – PNC Bank; (iii) and attached as Exhibit 5 – T. Rowe Price. Also attached as Exhibit 6 is FI360's Fiduciary Score guide demonstrating its use of "FIDUCIARY SCORE."

11. FI360 registered the mark "FI360 FIDUCIARY SCORE" on September 28, 2010. That registration is attached as Exhibit 7.

12. Through the long and continuous exclusive use of "FIDUCIARY SCORE" by FI360, "FIDUCIARY SCORE" has an acquired distinctiveness that the public associates with FI360 as the source of FI360's informational services, which include the reporting of a quantitative rating of a fund's prudent fiduciary management.

13. Because of FI360's distinctive uses of the mark "FIDUCIARY SCORE," FI360 has a family of marks, "FI360 FIDUCIARY SCORE", "FIDUCIARY SCORE", and "FI360 TDF SERIES FIDUCIARY SCORE."

**B. YCHARTS' INFRINGEMENT AND APPROPRIATION OF FI360'S TRADEMARKS AND COPYRIGHTS**

14. Upon information and belief, YCHARTS began using "THE FIDUCIARY SCORE" to identify its information services of providing a fiduciary standard of care rating to funds. See attached Exhibit 8. YCHARTS' use of the "THE FIDUCIARY SCORE" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of YCHARTS with FI360, and create a mistaken belief as to the origin, sponsorship, or approval of YCHARTS' commercial activities by FI360.

15. Upon information and belief, YCHARTS has had access to FI360's expression of FI360's methodology for FI360's informational services marketed and sold using the mark "FIDUCIARY SCORE." FI360's expression of its methodology is available online and in many locations including, but not limited to, FI360's numerous licensees.

16. Upon information and belief, YCHARTS has copied FI360's expression of FI360's methodology including, but not limited to, the critical interpretation of the score. YCHARTS' and FI360's expression of methodology are shown below for comparison.

## YCHARTS

Range	Explanation
100 - 90	This investment has minimal shortfalls and may be an acceptable choice.
89 - 70	The investment has shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, it may not need to be replaced if mitigating circumstances are present.
69 - 40	The investment has considerable shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced pending further investigation or if the Score improves in subsequent time periods.
39 - 0	The investment has significant shortfalls and may not be appropriate for use in a fiduciary account. Strongly consider replacing the investment if already in use.

## FI360

	0	No fiduciary due diligence shortfalls.
	1-25	The investment may be an appropriate choice for use in a fiduciary account.
25 <sup>th</sup> Percentile →	26-50	The investment has noteworthy shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced if mitigating circumstances are present.
50 <sup>th</sup> Percentile →	51-75	The investment has considerable shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced pending further investigation or if the score improves in subsequent time periods.
75 <sup>th</sup> Percentile →	76-100	The investment has significant shortfalls and may not be appropriate for use in a fiduciary account. Strongly consider replacing the investment if already in use.

17. It appears from the above comparison that YCHARTS attempted to conceal its copying by flipping the scoring system numbers, i.e. while 0 is the best number for a “FIDUCIARY SCORE” in FI360’s description, 0 is the worst number in YCHARTS’ explanation. This will confuse consumers that associate “FIDUCIARY SCORE” with FI360 because now a “FIDUCIARY SCORE” investment rating of fiduciary soundness of 20 means

two entirely different things. In addition to further confusing consumers, flipping the scoring system also does not provide cover for the copying of FI360's expression. A comparison of YCHARTS' wording with FI360's wording is revealing.

<b>Fi360 Color vs Y-Chart Color</b>	<b>Fi360's Expression</b>	<b>YCHARTS' Expression</b>
Green v. Green	The investment may be an appropriate choice for use in a fiduciary account.	This investment has minimal shortfalls and may be an acceptable choice.
Lime Green v. Yellow	The investment has noteworthy shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced if mitigating circumstances are present.	The investment has shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, it may not need to be replaced if mitigating circumstances are present.
Yellow v. Orange	The investment has considerable shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced pending further investigation or if the score improves in subsequent time periods.	The investment has considerable shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced pending further investigation or if the Score improves in subsequent time periods.
Red v. Red	The investment has significant shortfalls and may not be appropriate for use in a fiduciary account. Strongly consider replacing the investment if already in use.	The investment has significant shortfalls and may not be appropriate for use in a fiduciary account. Strongly consider replacing the investment if already in use.

The above chart demonstrates that YCHARTS' expression is substantially similar to FI360's expression.

**CAUSES OF ACTION**

**COUNT I  
COPYRIGHT INFRINGEMENT**

18. The allegations in Paragraphs 1 through 18, above, are incorporated by reference as if fully restated herein.

19. FI360 has registered copyrights in its expressions. FI360 owns registrations for the expressions in its Fiduciary Score Methodology. Attached as proof of FI360's ownership and registration of its copyrights to Fiduciary Score Methodology are: (i) Exhibit 9 is FI360's draft copyright registration TX 008369387 which is proof of FI360's ownership and registration of Fiduciary Score Methodology 2004; (ii) Exhibit 10 is FI360's draft copyright registration TX0008369396 which is proof of FI360's ownership and registration of Fiduciary Score Methodology 2006; and (iii) Exhibit 11 is FI360's draft copyright registration TX0008369065 which is proof of FI360's ownership and registration of Fiduciary Score Methodology 2014.

20. YCHARTS' copying and distribution of FI360's expression of FI360's methodology infringes FI360's copyrights under 17 U.S.C. § 501.

**COUNT II  
FALSE DESIGNATION OF ORIGIN  
15 U.S.C. § 1125 Lanham Act [Section 43]**

21. The allegations in Paragraphs 1 through 20, above, are incorporated by reference as if fully restated herein.

22. YCHARTS' use of "THE FIDUCIARY SCORE" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of YCHARTS with FI360, and create a mistaken belief as to the origin, sponsorship, or approval of YCHARTS' commercial activities by FI360. YCHARTS' use of "THE FIDUCIARY SCORE" is in violation of 15 U.S.C. § 1125(a).

**PRAYER FOR RELIEF**

WHEREFORE, FI360 requests this Court to enter judgment in its favor and against YCHARTS awarding FI360 the following relief:

1. Preliminarily and permanently enjoining YCHARTS, its respective officers, agents, servants, employees, and any others acting in concert with YCHARTS directly or indirectly from:
  - (a) using the terms or marks “FIDUCIARY SCORE,” “THE FIDUCIARY SCORE,” or anything confusingly similar thereto which is likely to cause confusion; and
  - (b) infringing FI360’s copyrights in FI360’s expression of FI360’s methodology.
2. Awarding FI360 damages in the amount determined to be appropriate by the Court.
3. Trebling of the damages awarded above for the willful infringement.
4. Awarding FI360 attorneys’ fees.
5. Granting FI360 all such other relief as the Court deems just and proper.

**Respectfully submitted,**

Dated: Pittsburgh, Pennsylvania  
June 13, 2017

s/John C. Thomas III

John C. Thomas III  
Pa. I.D. No 85532  
[jthomas@beckthomas.com](mailto:jthomas@beckthomas.com)  
Charles H. Dougherty, Jr.



Pa I.D. 83795  
[cdougherty@beckthoams.com](mailto:cdougherty@beckthoams.com)  
Richard T. Ting, Esq.  
Pa. I.D. 200438  
[rting@beckthomas.com](mailto:rting@beckthomas.com)  
Beck & Thomas, P.C.  
Suite 100  
1575 McFarland Road  
Pittsburgh, Pennsylvania 15216  
Tel: (412) 343-9700  
Fax: (412) 343-5787

Attorneys for Plaintiff